

Remarks

Applicant has submitted corrected drawings, and believes that these meet the Examiner's objections. Replacement versions of all the original drawings are included. Applicant respectfully requests substitution of these drawings.

Applicant has amended claim 1 to clarify that the sheets of the invention are formed into a three dimensional shape, and that the slides themselves present multiple angled surfaces to impede roosting. This amendment is supported in the specification at page 4, lines 17-23 and drawing figures 1, 2 and 4.

Applicant has amended claim 2 to clarify that the peaked polyhedron slide piece has multiple sloped faces exposed to the birds when the slide is attached to the structure. It also clarifies that the slide sits as a cap on the surface to be protected. The amendment is supported in drawing figures 1, 2 and 4.

Applicant has amended claim 3 to clarify that the slide in that claim is in the form of a triangular prism. The amendment is supported in figures 2 and 4.

Applicant has amended claim 5 to clarify the use of a triangular pyramid in which the bottom, where the slide is attached to the roosting zone surface, is partially open. The amendment is supported by figure 4.

Applicant has added claim 10 to claim the use of a slide structure formed as a partial pyramid. This amendment is supported by figure 2 and the specification at page 4, lines 18-19.

Applicant has added claim 11 to restate former claim 8 in independent form to clarify that the slide is applied to a sloped rooftop and follows the slope of the rooftop. This amendment is supported in the specification at page 6, lines 8-17 and by figures 7 and 8.

In response to the Examiner's rejections, Applicant respectfully submits that the claims, as amended, are not anticipated by the Goergen reference. Nor are the claims obvious in light of the art cited by the Examiner.

With respect to amended claim 1, Goergen does not disclose a bird control device that imposes a plurality of angled surfaces to inhibit the bird from standing. Each example in Goergen, at figs 1, 2 and 4, employs a device that imposes only one angled surface to deter birds. In all three Goergen figures, the surface to be protected consists of a vertical wall and a horizontal shelf, such as a building ledge or a girder flange. Goergen's device imposes a single angled surface to deter birds. While the device configuration may be a multi-sided solid, only one side is exposed, the remaining sides being contiguous to the structure being treated. By contrast, amended claim 1 claims a shape that presents a plurality of exposed angled surfaces to deter roosting.

Claim 2, as amended, claims a device in the shape of a peaked polyhedron wherein multiple sloped surfaces are presented to the birds when the device is in place. In addition, the device of claim 2 is placed as a cap on the roosting zone. The Goergen device, by contrast, fills in the space formed by vertical and horizontal components of the structure being protected and does not form a cap. The slide of claim 2 does not require adjacent horizontal and vertical surfaces and is thus more flexible in its application.

The Examiner states that figure 4 of Goergen discloses a device that is "a polyhedron with a plurality of exposed surfaces." Applicant respectfully submits that figure 4 shows no such thing. Figure 4 is described in the specification at col 2, lines 58-64. Part 30 is a "strip of extruded plastics material" that is inclined at an angle of 45 degrees and "is fixed to the horizontal and vertical surfaces of the girder by beads F of adhesive polyurethane foam." Thus,

this Goergen figure discloses a single strip, not a polyhedron with a plurality of exposed surfaces. It would be improper for the Examiner to misinterpret the drawing to transmute the adhesive foam beads into additional surfaces of a non-existent polyhedron.

Claim 3, as amended, clarifies that the slide is in the shape of a triangular prism. While figure 2 of Goergen appears to show a triangular prism, the device in place does not present a plurality of angled slide surfaces. Instead, it presents a single exposed slide surface.

The Examiner states that Goergen anticipates claim 4 by disclosing a device in the shape of a pyramid at figure 1. Applicant respectfully notes that Goergen's figure 1 shows a cross-section of the device, having a triangular shape. This device may be a triangular prism, although no perspective view is shown to suggest that shape. In any event, it is not a pyramid shape or even a partial pyramid. The common definition of a pyramid is "a geometrical solid having a polygon for its base and three or more triangles for its sides that meet at a point to form the top." Multiple triangular sides meeting at the top are not disclosed in figure 1 or anywhere else in Goergen.

Claim 10 incorporates the placement of a slide in the shape of a partial pyramid, i.e., a pyramid as defined above with a plurality of triangular sides, but with one or more sides missing. This shape is illustrated in item 113 of figure 2, in which only two of the four triangular sides of a rectangular pyramid are present, capping the exposed ledge.

Claim 11 claims a method of discouraging the roosting or nesting of birds on rooftop structures comprising the steps of identifying nesting zones on the rooftop structure and applying thereto a slide comprising a sheet of material having a slick outer surface and mounted to impose an angled surface that inhibits a bird's standing, wherein the slide comprises a sheet that follows a slope of the rooftop structure and covers the nesting zone. In this claim, a flat or contoured

contoured slide sheet follows the slope of a rooftop to prevent a slick surface inhibiting standing or the laying of eggs, which would roll. Claim 11 differs from former claim 8 in that it clarifies that the slide follows the slope of the rooftop. The Examiner has rejected claim 8 as anticipated by Goergen's disclosure of a sheet 30 in figure 4. The Examiner incorrectly characterized this sheet as "following the slope" of the structure at the roosting zone. The slope in figure 4, however, is a right angle between the wall and the ledge; sheet 30 does not follow this slope. It is also noted that the Examiner also identified item 30 of figure 4 as a polyhedron with a plurality of exposed surfaces, which is inconsistent with its being a sheet following a slope.

The claims as amended are also not rendered obvious by the combinations cited by the Examiner. Claim 5 now recites a triangular prism mounted as in inverted V shape. The Examiner states that McDonald's figure 3 discloses a deterrent in an inverted V. But McDonald clearly and specifically discloses a conical cap. Although a section through the apex of a cone is V-shaped, the combination of McDonald's cap with Goergen's device is impossible to accomplish. Goergen's device is solely suited to fit a horizontal ledge protruding from a vertical wall, and no cone-shaped configuration can cover the length of an elongated ledge.

Finally, claim 12, which is a modification of claim 9, recites a slide sheet having a periphery wherein a bead of silicone adhesive is applied along the periphery to prevent anchoring of nesting materials. As this claim depends from a demonstratedly patentable claim, it should be allowed. In rejecting claim 9, the Examiner combined one reference (Goergen) having an adhesive with another (Wiesener) disclosing a silicone adhesive. The Examiner then stated that "it would have been obvious" to use silicone adhesive "along the periphery of the device in order to create a water resistant seal." The Examiner cites no reference for the contention, but instead vaguely points to caulk seals around sinks and bathtubs. Here the Examiner has used the claim

as a blueprint for hindsight piecemeal construction of the invention from disparate elements, which is impermissible. No reference discloses applying a silicone adhesive at the periphery to prevent anchoring of nesting material, or applying a silicone adhesive at the periphery for any other purpose.

Applicant believes it has been shown that each of the amended claims is patentably different from the prior art. In light of the foregoing, Applicant requests that the claims be allowed. If further clarification would be helpful, the Examiner is invited to contact the undersigned.

Respectfully submitted,

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